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December 10, 2021

**VIA CM/ECF**

Honorable Mary Kay Vyskocil  
United States District Judge  
United States District Court  
Southern District of New York  
500 Pearl Street, Room 2230  
New York, NY 10007

Re: *Goureau, et al. v. Lemonis, et al.*; Case No. 1:20-cv-04691-MKV  
Letter Regarding Plaintiffs' Motion (Dkt. No. 100)

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Honorable Judge Vyskocil:

We represent Defendants Marcus Lemonis, ML Retail, LLC, and Marcus Lemonis, LLC (collectively, “ML Defendants”), in the above-referenced action brought by Nicolas Goureau and Stephanie Menkin (collectively, “Plaintiffs”) against ML Defendants and Machete Corporation (“Machete”) (collectively, “Defendants”).

ML Defendants write briefly, out of an abundance of caution, to inform the Court that they intend to file an opposition to Plaintiffs’ latest motion (Dkt. No. 100) seeking relief pursuant to Federal Rules of Civil Procedure 59(e) and 60(b). Unless the Court sets a different schedule, ML Defendants intend to follow the schedule set forth in Local Rule 6.1(b). ML Defendants respectfully request that the Court defer any ruling on Plaintiffs’ motion until ML Defendants have had a chance to file their opposition papers.

There is good cause for deferring a ruling on Plaintiffs’ new motion because the motion is wholly without basis. Plaintiffs have not even come close to meeting their heavy burden under Rule 59(e) or to demonstrate the exceptional circumstances required for relief under Rule 60(b). As set forth in ML Defendants’ prior letters to the Court (Dkt Nos. 93, 94, and 97), Second Circuit case law is unequivocal that a dismissal pursuant to Rule 12(b)(6) is on the merits, with prejudice and preclusive effect. *See, e.g.*, Dkt. No. 93 at 1-2. Plaintiffs have not cited any authority compelling a different result here.

ML Defendants would like to have the opportunity to more fully present that argument, and respond to Plaintiffs’ other arguments, before the Court issues a decision.



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Accordingly, ML Defendants respectfully request that the Court defer decision pending ML Defendants' opposition. We thank the Court for its continued time and attention to this matter.

Respectfully submitted,  
SEYFARTH SHAW LLP

*/s/ Jesse M. Coleman*

Jesse M. Coleman

cc: Counsel of record (via ECF)